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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,852

10/14/2004

Barbara Wagner

HU/5-22660/A/PCT

4838

324 7590 12/12/2007  
CIBA SPECIALTY CHEMICALS CORPORATION  
PATENT DEPARTMENT  
540 WHITE PLAINS RD  
P O BOX 2005  
TARRYTOWN, NY 10591-9005

EXAMINER

HAVLIN, ROBERT H

ART UNIT

PAPER NUMBER

1626

MAIL DATE

DELIVERY MODE

12/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/511,852	Applicant(s) WAGNER ET AL.	
	Examiner Robert Havlin	Art Unit 1626	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____                                                           | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

**Status of the claims:** Claims 13, 14, and 16 are currently pending. Claims 1-12 and 15 were cancelled.

**IDS:** The IDS dated 10/11/07 was considered.

**Declarations:** The 132 declaration filed on 10/11/07 was considered.

### *Rejections*

Applicant argues in (1.) that the Zwiglmeyer (US 2,715,629) only teaches benzothiazole compounds (identical chemical family as the instant claims) as fluorescent whitening agents for paper applications. Although, the reference suggests a use for whitening paper, the teachings of the reference are focused on the compound having the property making it useful purposes such as reflecting light. Therefore the examiner maintains, one of skill in the art would immediately appreciate the compounds potential uses including as a sun-block and are relevant to an obviousness determination.

In (2.) applicant argues Degen (US 4,002,733) teaches compounds structurally completely different from the instant invention. This is not found persuasive because on column 10, line 25 the application actually discloses a benzothiazole compound which is a mere positional isomer of formula (1) of claim 13. Furthermore, the claims of Degen are drawn to sun-block compositions including dimmers of the same type of benzothiazole compounds. Therefore, the examiner maintains Degen is relevant to an obviousness determination.

In (3.) applicant argues that Fabian (Chem. Rev., 1992, p.1205) teaches the investigation of the solubility of light absorbing compounds cosmetic inappropriate solvents and therefore is not relevant. The examiner does not find this persuasive because as cited in the prior office action, the reference teaches increasing the chain length of alkyl groups to increase solubility of these light absorbing compounds. Because this modification is the only distinguishing characteristic from Zwiglmeyer, the teachings are clearly relevant as evidence these types of modifications are well known to those of ordinary skill in the art.

Finally, the applicant submits evidence in a 132 declaration showing that the compounds of the instant invention have solubility different from a few of those in the prior art. Although the evidence does show in some cases increased solubility in more lipophilic solvents, this type of result is expected when introducing longer alkyl chains on compounds, just as was taught by Fabian and is well known in the art. Thus, the results are not surprising nor unexpected and are not persuasive as to the obviousness of the instant claims.

Therefore, the rejection of claims 13, 14, and 16 under 35 USC 103(a) is maintained.

### ***Conclusion***

All claims are rejected. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

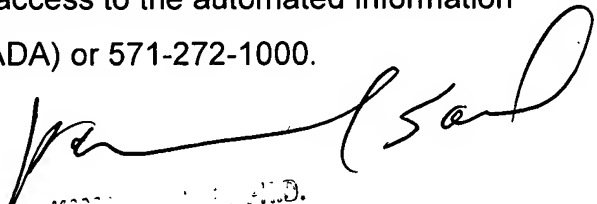
### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Havlin whose telephone number is (571) 272-9066. The examiner can normally be reached on Mon. - Fri., 7:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful the examiner's supervisor, Joe McKane can be reached at (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert Havlin  
Examiner

  
MAILED 11/13/04  
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